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ABSTRACT

Three persistent misconceptions about collective bargaining for public employees are 1) that public employee organizations are singularly culpable for strikes in the public sector, 2) that strikes necessarily follow collective bargaining and will not occur unless the right to bargain has been granted, and 3) that public employees have less right to "life, liberty, and the pursuit of happiness" than private-sector employees. Contrary to the second misconception, private-sector experience since the enactment of the Wagner Act in 1935 has shown that it is the absence of collective bargaining that brings strikes and disorder. Collective bargaining, mediation, fact-finding, and arbitration have the potential to resolve discontent without a strike. The price of stability is equity. Deny equity and induce instability. Teachers will go on strike only as a last resort, only if they see no reasonable and logical alternative. Unhappily, there is no national standard governing collective bargaining for public employees, and the consequences of state-by-state regulation are both illogical and inequitable. (Author/JG)

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PRESENTER: Terry Herndon, Executive Director, National Education Association
TOPIC: "Equity and Stability in Public Employment"
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Forty-one years after the Wagner Act guaranteed private workers the right to bargain collectively, public employees find themselves portrayed as threats to an orderly society in such patently exaggerated statements as these:

--Permitting teachers to bargain with school boards would mean "the end of representative government in this country."

--A promised raise for municipal workers would be "an ill-timed raid on the city's already bare fiscal cupboard."

--Residents of Atlanta are "tired of being pushed around by municipal strikers in the name of 'justice.'"

So, one reads and hears, from observers of Boston and Chicago and Peoria.

Whether they derive from luncheon speakers' end-of-the-republic rhetoric or from journalistic viewing with alarm, all such opinions share some common and dangerous misconceptions about collective bargaining for public employees. I speak for 1.8 million National Education Association teacher-members in particular and public employees in general, in refuting three of the most persistent of these misconceptions:

One, that public employee organizations are singularly culpable for strikes in the public sector.

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Two, that strikes necessarily follow collective bargaining and will not occur unless the right to bargain has been granted.

Three, that public employees have a lesser entitlement to "life, liberty, and the pursuit of happiness" than do their private sector counterparts. That's the implication, at least, of much public reaction to public employees' aspirations.

Such contentions are foolish and, more importantly, futile. To place sole blame on public employee organizations for public sector strikes, one must hold that public managers (politicians) are incapable of injustice, duplicity, selfishness, insensitivity or error in judgment or, in the alternative, that public employees should patiently endure the weight of any act of injustice, duplicity, selfishness or insensitivity intentionally or mistakenly imposed on them. My respect for politicians seems to be higher than that of most of my fellow citizens. Even so, I cannot accept that politicians are categorically as "pure as the driven snow" or even purer than their counterparts in the private economy. And if public managers are not potentially more noble than their private sector counterparts, why is it not reasonable and equitable that their employees -- public employees -- have equal protection against their ignobility? Anyone who believes that a sanitation worker is entitled to justice, a teacher to fairness, and a fire fighter to safety, must grant them the means to gain and defend these goals.

Contrary to the second misconception, it is the absence of such means that brings strikes and disorder. Before enactment of the Wagner Act (the National Labor Relations Act) in 1935, private sector workers had no legally protected means to gain equity in their relationship with their employers. As a result strikes caused widespread disruption of our productive capacity. On the assumption that equity and stability were inseparable, Congress passed the Wagner Act to diminish this disruption.

The preamble to the Act declared that the public could not afford strikes in the private sector; that the employer's denial of the right to collectively bargain leads to strikes and other forms of strife contrary to the public interest; that the statutory protection of the right to organize and to collectively bargain removes the sources of unrest and instability by encouraging practices which are fundamental to the friendly adjustment of disputes and by restoring equality of bargaining power.

The assumptions have proven to be so demonstrably valid that we now have compatible labor codes in nearly every state and no responsible voice has advocated repeal for a couple of decades. Yet we deny these realities in the public sector. Public workers are told instead that collective bargaining fosters strikes. This is pure rubbish and the facts support my case.

Indeed it is true that discontent and long festering

grievances contribute to unionization and strikes. It is, however, no less true that collective bargaining, mediation, fact-finding, and arbitration have the potential to resolve the discontent without a strike. Equity and stability are permanently and inseparably related. Recognition of this relationship is important to the wellbeing of every community.

What then of the third misconception -- that public employees should just expect less? No other group of workers has lowered its expectations or reduced its demands voluntarily. When they perceived an unresponsive management during contract negotiations in the fall of 1974, the United Mine Workers went on strike. In our energy-starved economy, hundreds of industries were brought to the brink of closure with the potential unemployment for millions. When the freighthaulers were unhappy last April over the state of negotiations with major trucking firms, they struck with an impact on the whole of our commerce. When the UAW strikes automobile manufacturers, Michigan state revenues decline and the necessary reductions in all state services follow. When the cannery workers struck at the peak of last summer's harvest in California, millions of dollars in foods perished. When the teachers in Buffalo announced a meeting to consider a strike, they were enjoined from proceeding to threaten the public interest. The teachers were repressed by the same laws which protected all the others. Yet there is none who can demonstrate the involvement of a great public interest.

Nonetheless, I won't belabor altruism and equity. I will instead focus on reality. We, as a people. hold that all men are entitled to "life, liberty, and the pursuit of happiness." If we cannot agree as to when these principles have been achieved, I think that we can at least agree that each person craves their achievement in his own life. We can, in addition, agree that, in our socio-economic system this fulfillment is directly job related. In a career oriented, capitalistic, consumer society one's self-concept, sense of worth, life style, social standing, opportunities for his children, medical care, old age security, and personal influence are all a function of job and earning capacity. This is no less true for 15,000,000 public employees than for the 80,000,000 private sector wage earners. As a result of this vital piece of reality and commonality, there is no theory that will cause public employees to want less than they see all around them or to perceive their jobs differently than do others.

What then of increasing unionization and militancy among public employees? It's simple. Spurn a moderate and create a militant. The price of stability is equity. Deny equity and induce instability.

I cannot speak for all strikes in the public sector, but there are several things I can say assuredly about teachers' strikes. One, teachers don't want them. Some reactionaries may welcome them. There were, I'm told, some prominent persons in New York City who hoped that the teachers there would stay on strike for a long time, apparently in the conviction that

it would balance the city budget. But teachers will go on strike only as a last resort, only if they see no reasonable and logical alternative. Furthermore, strikes generally reflect the morass of broken promises, the massive layoffs, the threats of further reductions, and the general insecurity has beset the teaching profession. These circumstances are forcing more and more teachers to take the last resort; in 1972 there were fewer than 75 teacher strikes and in 1975 more than 200.

It is not always a teacher's interest in an equitable salary that moves him to protest. In the fall of 1975, East Whittier California teachers objected to the administration of a standardized test that they regarded as too rigid. The teachers maintained that the test had never been validated against another test, that it did not reveal what specific questions their pupils missed, and that it did not really help them evaluate a child's progress. Moreover, the test was routinely given, not at a time convenient to the pupils, but to conform to the schedule of a shared-time computer.

When school administrators disregarded the teachers' objections and persisted in giving the tests, the teachers protested publicly. They did not strike their classrooms, but they refused to participate in the testing, and on their own time they picketed school administration offices, carried their case to school board meetings, and explained their objections at meetings held in the homes of pupils' parents.

After months of such resistance the school system modified the testing program and its objectives and gave the teachers the option of using the specified test or any other commercial test.

This focus on pedagogy is not unique. In a recent poll of the NEA membership we asked teachers to identify the most important changes they would like to make on their jobs. Lower class size was at the top of the list, followed by better curriculum, better administration, and finally, higher salary.

Teachers want to be treated like the citizens and professionals they are. Teachers care about their product: an educated America. They are not custodians, a role that in too many instances over-crowded and often violent classrooms have forced them to play. They want two things, essentially--to teach the best ways they know how and to live with reasonable economic security.

Where do we stand in our quest for equity? Unhappily, there is no national standard. Four states have embraced an anti-bargaining policy. Fifteen states have no policy. Thirty-one have positive laws, but no more than 15 authorize comprehensive collective bargaining and only four treat the strike as a legal protest. On the whole, public policy in the United States says that the public employee is to "grin and bear it."

The consequences of state-by-state regulation are both illogical and inequitable. One example: In Pennsylvania, teacher strikes are entirely legal. A few miles east in New

Jersey, when our members go on strike they risk arrest, jailing, and fines. What's more, in the absence of protective laws, our members are often subjected to treatment commonly accorded criminals. Last fall, in Shelton, Connecticut, seven striking teachers -- four of them women -- were arrested, searched, deloused, and put in prison with convicted felons.

Since 1972, NEA representatives have gone before Congressional committees three times to testify on behalf of bills that could bring a new stability to the public sector. None of the bills has made it out of committee. And in the sixth consecutive anti-public employee ruling of the term, the U.S. Supreme Court, in effect, denied Congress the power to enact our proposal. The specific case, National League of Cities v. Usery, had to do with whether Congress had authority to extend minimum wage and overtime provisions to state and local government employees. By a margin of 5 to 4, the Court said that it did not.

Not insignificantly, the majority ruling was written by Justice William Rehnquist, the last Nixon appointee to the Court. To Justice Brennan, whose minority opinion received scant media attention, the decision was disturbingly reminiscent of those made in the 1930s by a Court that was known as the Nine Old Men and which in its hell-bent efforts to undo the New Deal precipitated a Constitutional crisis. "I cannot recall," Justice Brennan wrote, "another instance in the Court's history when the reasoning of so many decisions covering so long a span of time has been discarded roughshod."

It should be noted, too, that with monumental disregard for judicial consistency, the Rehnquist ruling left untouched last year's decision upholding the federal power to freeze the wages of state and local government employees. We are, therefore, left with a Court view of Constitutional equity that permits the federal government to take away wage increases but prohibits it from setting even a minimum standard for granting them.

Nonetheless, since the settlement of disputes without the disruption of a strike is clearly in the interest of both teachers and the public, NEA has not abandoned its campaign to enact a federal law which establishes the public employees' right to collective bargaining.

Careful examination of the statute we proposed in earlier sessions of Congress convinces us that we could revise that measure in a way that would meet conditions laid down by the Court in the National League of Cities ruling. And we believe we can do it without reducing the effectiveness of such a law as a means of achieving collective bargaining for teachers. If we are successful, then every teacher along with other state and municipal employees will have access to statutorily protected collective bargaining. Hopefully, this will bring us more equity and bring more stability to our relationship with the public that we serve. We have never enjoyed the support of AASA in this cause. However, we think it reasonable that you help us. Needless to say, your support would be greatly respected and deeply appreciated.